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10 **IN THE SUPREME COURT**  
11 **IN AND FOR THE STATE OF ARIZONA**

12  
13 PETITION TO REPEAL ORDER NO. R- ) Supreme Court No. R-\_\_\_\_\_  
14 16-0041 or AMEND RULE 7 OF THE )  
15 RULES OF THE SUPREME COURT ) PETITION TO REPEAL ORDER  
16 ) No. R-16-0041 OR AMEND RULE 7

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18 Pursuant to Arizona Supreme Court Rule 28, the undersigned respectfully  
19 submits this petition to the Court requesting the repeal of Arizona Supreme Court  
20 Order No. R-16-0041, in part, or in the alternative, amendment of Rule 7 of the  
21 Arizona Rules of the Criminal Procedure, as follows.

22 **I. Background**

23 On September 2, 2016, Chief Justice Scott Bales issued an Order Amending  
24 Rule 7.6 under No. R-16-0024. A subsequent Order Amending Rule 7 including Rule  
25 7.6 was issued on December 14, 2016 under No. R-16-0041. A subsequent filing is  
26 currently in the early stages which includes amending Rule 7 again under No. R-17-  
0002. The changes made to Rule 7 under No. R-16-0041 should be repealed or  
amended as the changes made were in violation of State Statutes and the Arizona  
Constitution.

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## II. Argument

“All persons charged with crime shall be bailable by sufficient sureties...”<sup>1</sup> Ariz. Const. Art. II, § 22. Pursuant to ARS 13-3967, in determining the method of release or the amount of the bail, the judicial officer, on the basis of available information, shall take into account all of the following:

1. The views of the victim.
2. The nature and circumstances of the offense charges.
3. Whether the accused has a prior arrest or conviction for a serious offense or violent or aggravated felony as defined in section 13-706 or an offense in another state that would be a serious offense or violent or aggravated felony as defined in section 13-706 if committed in this state.
4. Evidence that the accused poses a danger to others in the community.
5. The results of a risk of lethality assessment in a domestic violence charge that is presented to the court.
6. The weight of the evidence against the accused.
7. **The accused’s family ties, employment, financial resources, character and mental condition.**
8. The results of any drug test submitted to the court.
9. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
10. Whether the accused violated section 13-3407, subsection A, paragraph 2,3,4 or 7 involving methamphetamine or section 13-3407(D).
11. The length of residence in the community.
12. The accused’s record of arrests and convictions.
13. The accused’s record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
14. Whether the accused has entered or remained in the United States illegally.
15. Whether the accused’s residence is in this state, in another state or outside the United States.

Legislators who worked diligently for the people of the State of Arizona developed and adopted this Statute as a set of guidelines for the Court to consider when deciding on an amount of bail. The only mention of a person’s financials are

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<sup>1</sup> A few exceptions do apply for specific crimes details in Article II Section 22(a)(1)-(4) of the Arizona Constitution.

1 included in Section (7) of the Statute and details a person's "resources" not their  
2 "financial circumstances" which was the basis for developing the new bail structure.  
3 According to the State Constitution all defendants, with some exceptions, shall be  
4 bailable by sufficient sureties. The criminal procedure rules hold that a Surety "...is  
5 one who executes an appearance bond..." The new bail structure created two new  
6 categories - "unsecured appearance bonds" and "deposit bonds." The Justice For All  
7 Task Force's abbreviated recommendations in the report issued in the Fall of 2016 are  
8 all great ideas; however, the manner in which they were implemented was in violation  
9 of the Arizona State Constitution and State Statutes.

10 **I. Limiting a Bail Bondsman's Ability to Post a Cash Bond is a Direct**  
11 **Interference with the Bail Bond Industry and is a Fundamental**  
12 **Change not a Procedural Change.**

13 The Justice for All Task Force "Task Force" was implemented under the March  
14 3, 2016 Administrative Order No. 2016-16 with specific outlined purposes to study  
15 and make recommendations. These included the following:

- 16 a. Recommend statutory changes, if needed, court rules, written policies, and  
17 processes and procedures for setting, collecting, and reducing or waiving  
18 court-imposed payments.
- 19 b. Recommend options for people who cannot pay the full amount of a sanction  
20 at the time of sentencing to make reasonable time payments or perform  
21 community service in lieu of some or all of the fine or sanction.
- 22 c. Recommend best practices for making release decisions that protect the  
23 public but do not keep people in jail solely for the inability to pay bail.
- 24 d. Review the practice of suspending driver's licenses and consider alternatives  
25 to license suspension.
- 26 e. Recommend educational programs for judicial officers, including pro tem  
judges and court staff who are part of the pretrial decision-making process.
- f. Identity technological solutions and other best practices that provide  
defendant notifications of court dates and other court-ordered deadlines using  
mobile applications to reduce the number of defendant who fail to appear for  
court and to encourage people who receive citations to come to court.

Based on the outlined objectives, the Task Force composed a recommendation to  
eliminate the cash bail system. In their Final Proposal for Amending Rule 7, the Task  
Force created a new definition for a cash bond: "A cash bond is a secured bond

1 consisting of actual cash deposited by the person released or someone on behalf of  
2 that person **other than a professional bondsman.**” There was no reasoning or  
3 rationale noted in the Task Force’s Recommendation as to why a cash bond cannot be  
4 posted by a professional bondsman. By issuing the order amending Rule 7.1 and the  
5 Definition of Cash Bond, the Court has effectively eliminated the Bail Bond  
6 Companies from being allowed to post a cash bond for their clients. This order is in  
7 direct violation of ARS 13-3969(c) which states “The sheriff or keeper of a county or  
8 city jail in the county or city in which criminal charges are filed or in which the  
9 person charged is jailed shall accept the bond from **any person.**”

10  
11 **II. Creating a Deposit Bond is in Direct Contradiction to Arizona  
Revised Statutes 13-3967 and 13-3969.**

12 ARS § 13-3967 delineates fifteen different criteria for determining release  
13 conditions as detailed above. After the Court considers all of those factors, ARS 13-  
14 3967 provides that the Court may impose any of the following conditions on a person  
15 who is released on his recognizance or on bail:

- 16 1. Place the person in the custody of a designated person or organization  
agreeing to supervise him.
- 17 2. Place restrictions on the person’s travel, associates or place of abode during  
the period of release.
- 18 3. **Require the deposit with the clerk of the court of cash or other  
19 security, such a deposit to be returned on the performance of the  
conditions of release.**
- 20 4. Prohibit the person from possessing any deadly weapon or engaging in  
certain described activities or indulging in intoxicating liquors or certain  
21 drugs.
- 22 5. Require the person to report regularly to and remain under the supervision  
of an officer of the court.
- 23 6. **Impose any other condition deemed reasonably necessary to assure  
24 appearance as required including a condition requiring that the person  
return to custody after specified hours.**

1           The statute clearly states, “cash or other security” as the criteria for monetary  
2 consideration being imposed on release. The definition of a cash bond has been  
3 included under the order in 7.1 but the definition of “Security” had already been  
4 established and states the following: “Security is cash, a surety’s undertaking, or any  
5 property of value, deposited with the clerk to secure an appearance bond...” The  
6 definition of a surety has already been established and details specific limitations for  
7 being a surety. Creating a “deposit bond” which eliminates the option of receiving  
8 assistance from a bail bond company in direct contradiction to ARS § 13-3967 was  
9 improper. Furthermore, ARS § 13-3969(e) details the types of bonds to be accepted  
10 by the jail:

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12           If bail is authorized by the court, the sheriff or keeper of a county or city  
13 jail shall directly accept **secured appearance bonds**, money orders,  
14 cashier's checks or cash for the release of persons in the custody of the  
15 sheriff or keeper. The sheriff or keeper of a county or city jail shall be  
16 open to accept **secured appearance bonds**, money orders, cashier's  
checks or cash twenty-four hours a day, every day, including holidays.  
[Emphasis added].

17       Twice in this section, the acceptable methods for posting bail are addressed. Nowhere  
18 in this section are deposit bonds mentioned. Until the Task Force was created to  
19 research this issue, deposit bonds did not even exist.

20  
21       Also, in accordance with ARS § 13-3969(C) again, deposit bonds must be  
22 allowed to be posted by bondsmen as well. The definition of the deposit bond  
23 eliminates a bondsman from being able to post this type of bond in direct  
24 contradiction to ARS § 13-3969. Creating rules which result in such a substantial  
25 change to the bail bond industry and the methods and manners of release may only be  
26

1 done through a legislative statutory change amending ARS § 13-3967 and § 13-3969.  
2 Simply modifying the definition of an appearance bond and then creating sub-  
3 categories represents a substantive change to the Arizona Revised Statutes in violation  
4 of the Arizona State Constitution, which requires substantial legislative changes to be  
5 passed either by direct legislation of the Arizona State Congress, or through the  
6 people by referendum and public vote. The Constitution clearly establishes the  
7 separation of powers at the State level. Even with the best of intentions, a judiciary  
8 Task Force, regardless of its assigned or presumed power, cannot purport to  
9 circumvent the Arizona State Constitution to unilaterally enact new legislation. This is  
10 a power strictly and expressly reserved for the legislative branch.  
11

12 **III. A Defendant's Financial Circumstances should not take priority**  
13 **over the Risk to the Community.**

14 ARS § 13-3967 details fifteen different criteria the Court is to consider in  
15 determining appropriate release conditions. The Order Amending Rule 7.3 places  
16 emphasis on the person's financial circumstances rather than the criteria outlined in  
17 ARS § 13-3967. The new rules added a paragraph which states,  
18

19 In deciding whether to impose a monetary condition of release and what  
20 amount to impose, the court must make an individualized determination of the  
21 person's risk of non-appearance, risk to the community, and financial circumstances  
22 rather than rely on a schedule of charge-based bond amounts. The courts must not  
23 impose a monetary condition that results in unnecessary pretrial incarceration solely  
24 because the person is unable to pay the bond. If the court determines a monetary  
condition is necessary, the court impose the least onerous of the types of bonds listed  
below in the lowest amount necessary to protect other persons or the community from  
risk posed by the person or to secure the person's appearance. Monetary conditions  
include:

- 25 (i) Unsecured appearance bond;  
26 (ii) Deposit bond;

- (iii) Other type or secured appearance bond; or
- (iv) Cash Bond<sup>2</sup>

By adding this language to the rules but only specifying three main criteria to consider, instead of the fifteen criteria outlined in ARS 13-3967, a disproportionate consideration has been placed on finances. ARS 13-3967 details a person's financial resources, not a person's financial circumstances. These two words are not synonymous, but are entirely distinct. A person's financial resources have been defined as "Money available for spending in the form of cash, liquid securities, and credit lines."<sup>3</sup> The Court commonly looks at a person's family ties ARS 13-3967(B)(7) when determining their financial resources. Going to an individualized approach and modifying the criteria to include a person's financial circumstances greatly changes the analysis and looks solely to the individual and not to their family ties in order to gain financial resources as required by ARS 13-3967. This has the effect upon the Judicial System of creating a substantial increase in the risk to community safety. There is no system in place to evaluate a person's finances before determining the appropriate bond amount. It is very easy for a Defendant to lie on this portion and claim poverty in order to be released on their own recognizance or have a smaller bond. While it may be beneficial for the jails to have a lower census, this should not come at a cost to the safety of the community. If this approach is to be used, a method for evaluating a person's finances must also be established.

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<sup>2</sup> It should be noted that of all of these types of monetary conditions, only one (secured appearance bond) is a bondsman able to post under these new rules.

<sup>3</sup> [www.businessdictionary.com](http://www.businessdictionary.com/definition/financial-resources.html), accessed at: <http://www.businessdictionary.com/definition/financial-resources.html>

1 **III. Conclusion**

2 For the foregoing reasons, the undersigned respectfully requests that the Court  
3 repeal the newly adopted Rule 7. In the alternative, the undersigned respectfully  
4 requests that Rule 7 be amended to eliminate the deposit bond, allowing bondsmen to  
5 post cash bonds, and restructure the financial language to reflect ARS § 13-3967.  
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7  
8 DATED this 10th day of April, 2017.  
9

10  
11 /s/ Samantha K DuMond  
12 Samantha K DuMond, Esq.  
13 *Attorney for the Arizona Bail*  
14 *Bondsmen Association*

15 Electronic copy filed with the  
16 Clerk of the Supreme Court of Arizona  
17 this 10<sup>th</sup> day of April, 2017.

18 By: /s/ Samantha K DuMond  
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